

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
RULE OF CIVIL PROCEDURE) **ORDER**
(I.R.C.P.) 40(d)(1) and ADOPTION OF RULE)
24(d))
_____)

The Court having reviewed a recommendation to amend Rule 40(d)(1) of the Idaho Rules of Civil Procedure, and to adopt Rule 24(d), and the Court having reviewed the proposed amendment and addition, and having approved them;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That a Rule 24(d) be, and the same is hereby, **adopted** to read as follows:

Rule 24(d). De facto custodian intervention.

(i) A request for de facto custodian status pursuant to Idaho Code Section 32-1704(1)(b) shall be brought by way of a Motion for Permissive Intervention if there is an existing Idaho order of child custody or a pending Idaho proceeding to establish custody with regard to the child or children that are the subject of the request. A child custody proceeding shall not include actions filed pursuant to title 16 of the Idaho Code. The Motion for Permissive Intervention shall be served pursuant to IRCP 7 in any pending child custody proceeding. The Motion for Permissive Intervention shall be served pursuant to IRCP 4 if the custody proceeding is closed. A Notice of Hearing shall be served along with the motion in accordance with IRCP 7(b)(3).

(ii) If the Motion for Permissive Intervention is granted, a Petition for De facto Custodian Status and Custody may be filed. The petition shall be served and adjudicated in substantially the same manner as an original proceeding. The petition and notice of hearing shall be served upon the parties pursuant to IRCP 4 unless otherwise ordered by the court. The Notice of Hearing shall direct the opposing party to file a written response within 20 days.

2. That Rule 40(d)(1) be, and the same is hereby, amended to read as follows:

Rule 40(d)(1). Disqualification without cause.

In all civil actions and petitions for judicial review, the parties shall each have the right to one (1) disqualification of the judge without cause, except as herein provided, under the following conditions and procedures.

(I) **Exceptions.** Notwithstanding the above provisions, the right to disqualification without cause shall not apply to:

(i) A judge when acting in an appellate capacity from another court, unless the appeal is a trial de novo;

IT IS FURTHER ORDERED, that this order shall be effective on the first day of October, 2010.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rule by lining through them is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through shall not be considered a part of the permanent Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 10th day of September, 2010.

By Order of the Supreme Court

Roger Burdick for
Daniel T. Eismann
Chief Justice

ATTEST:

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 9/10/10

STEPHEN W. KENYON

Clerk

By: Kimberly Greene Deputy